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FILED
Clerk
District Court

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For The Northern Mariana Islands
By _____
(Deputy Clerk)

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN MARIANA ISLANDS

ROBERT D. BRADSHAW,

CIVIL ACTION NO. 05-0027

Plaintiff,

vs.

COMMONWEALTH OF THE
NORTHERN MARIANA ISLANDS,
NICOLE C. FORELLI, WILLIAM C.
BUSH, D. DOUGLAS COTTON, L.
DAVID SOSEBEE, ANDREW
CLAYTON, UNKNOWN AND
UNNAMED PERSONS IN THE CNMI
OFFICE OF THE ATTORNEY
GENERAL, ALEXANDRO C. CASTRO,
JOHN A. MANGLONA, TIMOTHY H.
BELLAS, PAMELA BROWN, ROBERT
BISOM, AND JAY H. SORENSEN.

**DEFENDANTS' MOTION TO DISMISS
AND INCORPORATED MEMORANDUM
OF POINTS AND AUTHORITIES
[FED. R. CIV. P. 9(b); 12(b)(1); 12(b)(6)]**

Date: March 2, 2006
Time: 9:00 a.m.
Judge: Hon. Alex R. Munson

Defendants.

ORIGINAL

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MOTION

Defendants Justice Alejandro C. Castro, Justice John A. Manglona, and Timothy H. Bellas (collectively, the “Judicial Defendants”) move to dismiss Plaintiff Robert Bradshaw’s (“Bradshaw”) Amended Complaint in the above entitled action on the grounds that the case is moot, certain claims lack sufficient particularity, and Bradshaw has failed to state a claim upon which relief can be granted. Defendants make this motion pursuant to Rules 9(b), 12(b)(1) and 12(b)(6) of the Federal Rules of Civil Procedure.

FACTS

9 When Plaintiff Robert Bradshaw (“Bradshaw”) was Temporary Public Auditor of the
10 CNMI, he fired Robert Bisom (“Bisom”), legal counsel for the Public Auditor’s Office. As a
11 result of his termination, Bisom sued Bradshaw and others including the CNMI government
12 (“Bisom Lawsuit”). Bradshaw’s Amended Complaint (“Amended Complaint”) ¶ 23-24. The
13 Superior Court eventually entered a default judgment of one hundred thirty-nine thousand dollars
14 (\$139,000) against Bradshaw.

15 This default judgment was preceded by prolonged correspondence between Bradshaw
16 and the Attorney General's office as well as by Bradshaw's attempt to participate in the Bisom
17 Lawsuit. On December 6, 1996, one of Bradshaw's codefendants, Douglas Cotton, in his
18 capacity as an Assistant Attorney General for the CNMI, sent Bradshaw a letter advising him of
19 the Bisom Lawsuit and to expect service of a summons and complaint. *See* AGO letter to
20 Bradshaw dated December 6, 1996 attached to Amended Complaint. In a handwritten letter to
21 Mr. Cotton dated January 31, 1997, Bradshaw advised, "I will not authorize the CNMI to accept
22 service for me at this time." *See* Bradshaw letter to Cotton dated January 31, 1997 attached to
23 Amended Complaint.

24 Instead of asking the Attorney General's Office to defend him, Bradshaw attempted to
25 force Bisom to personally serve him, thus making service as difficult as possible for Bisom.
26 Upon personal service, he then planned to ask the Attorney General's Office for assistance. *See*
27 Letter to Mr. Bush dated July 14, 1999 ¶ 3 attached to Amended Complaint. As Bradshaw never
28 allowed the Attorney General's Office to accept service on his behalf, *see* Letter to Mr. Cotton

1 dated January 31, 1997 attached to Amended Complaint, and as he continued to claim that he
 2 was unaware of the proceedings, the Bisom Lawsuit continued in his absence. Subsequently,
 3 Justice Castro found that Bradshaw was properly served by mail and that, in any event, he
 4 waived service by filing a motion to dismiss. On February 25, 2000, Bisom obtained a judgment
 5 in the action. *See Bisom v. Commonwealth*, Civil No. 96-1320 (N.M.I. Super. Ct. 2000)
 6 (Attached hereto as "**Exhibit A**")¹. Bisom appealed a portion of the decision to the
 7 Commonwealth Supreme Court. The CNMI Supreme Court, by a three-justice panel of
 8 Associate Justice Manglona, Justice *Pro Tempore* Bellas, and Justice *Pro Tempore* Pedro M.
 9 Atalig (now deceased), affirmed the Commonwealth Superior Court judgment. *See Bisom v.*
 10 *Commonwealth*, 2002 MP 19 (attached hereto as "**Exhibit B**"). This Superior Court default
 11 judgment and the Supreme Court appellate opinion form the basis of the current lawsuit against
 12 the Judicial Defendants.

13 Although this service was, apparently, invalid, *see* Order Granting Robert Bradshaw's
 14 Motion to Vacate Judgment, Civil Action No. 96-1320 p. 16 (Attached hereto as "**Exhibit C**"),
 15 Bradshaw has seized on these events as a grand conspiracy against him. Bradshaw alleges that
 16 the default judgment is a product of a conspiracy that involved: most, if not all, of the Attorney
 17 General's Office; a Superior Court Judge; the entire Supreme Court of the CNMI; and the
 18 plaintiff in the suit, Mr. Bisom.

19 Unhappy with the judgment against him, and in keeping with his penchant for ineffective
 20 and wasteful procedures, Bradshaw resorted to a myriad of devices, other than hiring a lawyer
 21 and seeking to set aside the judgment against him, in an attempt to gain relief. Originally, he
 22 complained to then Attorney General Pam Brown, *see* Amended Complaint ¶ 104-113, which
 23 triggered an internal investigation. *See* Amended Complaint ¶ 104-113. On or before October 7,
 24 2004, the Attorney General's Investigative Unit advised Bradshaw that his allegations of
 25 wrongdoing in connection with the *Bisom* case were being investigated. *See* October 7, 2004
 26 letter from AGIU attached to Amended Complaint. Attorney General Brown, acting in her
 27

28 ¹ All exhibits attached hereto are court documents, which this Court may take judicial notice.

1 official capacity, then denied his untimely request for indemnification in the Bisom Lawsuit and
 2 advised Bradshaw that the CNMI would not reimburse him due to the Supreme Court's holding
 3 in *Bisom v. Commonwealth*, 2002 MP 19. With this avenue exhausted, Bradshaw turned to
 4 federal litigation instead of litigation in the CNMI courts.

5 On March 7, 2005, Bradshaw filed an action very similar to the instant case in the U.S.
 6 District Court for the District of Idaho. His Second Amended Complaint in that action asserted
 7 at least seventeen claims under an exhaustive list of civil and criminal statutes, including, among
 8 others, the Racketeer Influenced and Corrupt Organizations Act ("RICO"), the Immigration
 9 Reform and Control Act ("IRCA") and numerous Federal Civil Rights causes of action. *See*
 10 *Bradshaw v. Commonwealth of the Northern Mariana Islands, et al.*, Case No. CV 05-84-N-EJL
 11 (D. Idaho. 2005) (Attached hereto as "**Exhibit D**"). Bradshaw filed the action against Justices
 12 Manglona and Bellas² of the CNMI Supreme Court, former Superior Court Judge and now
 13 Supreme Court Justice Castro, and four Assistant Attorneys General because of their
 14 participation in the Bisom Lawsuit. The Idaho court granted a motion to dismiss Bradshaw's
 15 complaint on several grounds, including a lack of personal jurisdiction. *See id.* Bradshaw then
 16 filed the instant lawsuit on the same, or substantially similar, grounds.

17 Although he continues to maintain the current lawsuit, Bradshaw finally and legitimately
 18 moved in the CNMI Superior Court to set aside the default judgment entered against him. *See*
 19 Order Granting Robert Bradshaw's Motion to Vacate Judgment, Civil Action No. 96-1320,
 20 **Exhibit C.** Judge Lizama granted Bradshaw's motion in his decision dated December 29, 2005
 21 ("Lizama Order"). *See id.* at p. 16. Judge Lizama held that despite Justice Castro's previous
 22 rulings, Bradshaw was never properly served and therefore the court never obtained personal
 23 jurisdiction. *Id.* Judge Lizama then vacated the default judgment against Bradshaw. *See id.*

24 STANDARD OF REVIEW

25 In reviewing a Federal Rule of Civil Procedure 12(b)(6) motion to dismiss, the court must
 26 assume the truth of all factual allegations and must construe them in the light most favorable to
 27

28 ² Justice Bellas' appointment to the CNMI Supreme Court was *Pro Tem*. *See Bisson v. Commonwealth*, 2002 MP 19, **Exhibit B**.

1 the non-moving party. *See Cahill v. Liberty Mut. Ins. Co.*, 80 F.3d 336, 337-338 (9th Cir.1996).
 2 Legal conclusions, however, need not be taken as true “merely because they are cast in the form
 3 of factual allegations.” *Roberts v. Corrothers*, 812 F.2d 1173, 1177 (9th Cir.1987) (quoting
 4 *Western Mining Council v. Watt*, 643 F.2d 618, 624 (9th Cir. 1981) (in parenthesis); *see also*
 5 *Clegg v. Cult Awareness Network*, 18 F.3d 752, 754-55 (9th Cir. 1994).

6 Dismissal under Federal Rule12(b)(6) is appropriate when “it appears beyond doubt that
 7 the plaintiff can prove no set of facts in support of his claim which would entitle him to relief.”
 8 *Conley v. Gibson*, 355 U.S. 41, 45-46 (1957); *Navarro v. Block*, 250 F.3d 729, 732 (9th Cir.
 9 2001). Dismissal is warranted where the complaint lacks a cognizable legal theory or where the
 10 complaint presents a cognizable legal theory yet fails to plead essential facts under that theory.
 11 *See Robertson v. Dean Witter Reynolds, Inc.*, 749 F.2d 530, 534 (9th Cir. 1984); *Doe I v. The*
 12 *Gap, Inc.*, No. CV-01-0031, 2001 WL 1842389 *1 (D.N.Mar. I. Nov. 26, 2001). In spite of the
 13 deference the court is bound to pay to the plaintiff's allegations, it is not proper for the court to
 14 assume that “the [plaintiff] can prove facts which [he or she] has not alleged, or that the
 15 defendants have violated the ... laws in ways that have not been alleged.” *Associated General*
 16 *Contractors of California, Inc. v. California State Council of Carpenters*, 459 U.S. 519, 526
 17 (1983). “[A] liberal interpretation of a civil rights complaint may not supply essential elements
 18 of the claim that were not initially pled. Vague and conclusory allegations of official
 19 participation in civil rights violations are not sufficient to withstand a motion to dismiss.” *Ivey v.*
 20 *Bd of Regents of Univ. of Alaska*, 673 F.2d 266, 268 (9th Cir. 1982). While only requiring a
 21 short and plain statement of the claim, FRCP 8(a)(2) is not such a liberal requirement that purely
 22 conclusory statements can survive a motion to dismiss under Rule 12(b)(6). *Miller v.*
 23 *Continental Airlines*, 260 F.Supp.2d 931, 935 (N.D. Cal. 2003).

24 CLAIMS

25 Bradshaw makes numerous claims against the Judicial Defendants that are repeated
 26 throughout the 17 separate claims. The claims are, generally: Civil Rights violations under 42
 27 U.S.C. 1981, 1983-2000, Conspiracy and Interstate Fraud under 18 U.S.C. 241-242, Using Postal
 28 Materials under 18 U.S.C. 1341, 1342, 1349, 1707 and 39 U.S.C. 4005, violations of the CNMI

1 Court Rules, Fraud, Civil Conspiracy, violations of the Civil Rights Act of 1870, violations of
 2 the Civil Rights Act of 1871, breach of Bradshaw's employment contract, discrimination under
 3 Immigration Reform and Control Act, violations of civil rights under 18 U.S.C. 1961-65 (RICO),
 4 violations of Fifth, Ninth and Fourteenth Amendments of the U.S. Constitution, obstruction of
 5 justice, hiding criminal acts, damage to Bradshaw's credit, and emotional distress which
 6 occurred in the course of Superior Court case *Bisom v. Commonwealth*, Civ. Action No. 96-
 7 1320, and Supreme Court appeal *Bisom v. Commonwealth*, 2002 MP 19.

8 The Judicial Defendants will discuss their claims substantively by subject matter in turn
 9 with reference to each claim in heading.³

10 **ARGUMENT**

11 **I. The Judicial Defendants are entitled to absolute judicial immunity: Claims**
 12 **1-17**

13 In a transparent and misplaced attempt to remove a state court judgment against
 14 him, Bradshaw filed an eighty-one page federal lawsuit alleging, among other things, that the
 15 Judicial Defendants conspired with the majority of the Attorney General's Office—without any
 16 alleged reason—to allow a default judgment against Bradshaw. The Complaint clearly must be
 17 dismissed against the Judicial Defendants under the doctrine of judicial immunity.

18 Judicial immunity is absolute in nature, and as such, it is the equivalent of immunity from
 19 suit, not just a defense to liability. *See Mitchell v. Forsyth*, 472 U.S. 511, 526 (1985)
 20 (analogizing absolute and qualified immunity for purposes of interlocutory jurisdiction). Judicial
 21 immunity cannot be overcome by allegations of bad faith, corruption, or malice. *See Pierson v.*
 22 *Ray*, 386 U.S. 547, 554 (1967) (“[I]mmunity applies even when the judge is accused of acting

23
 24 ³ With regard to claims arising under state law, the Ninth Circuit has recognized that “a
 25 federal court exercising supplemental jurisdiction over state law claims is bound to apply the law
 26 of the forum state to the same extent as if it were exercising its diversity jurisdiction.” *Bass v.*
First Pacific Networks, Inc., 219 F.3d 1052, 1055 n. 2 (9th Cir. 2000); *see also Mangold v.*
California Pub. Utils. Comm'n, 67 F.3d 1470, 1478 (9th Cir. 1995). Pursuant to Title 7 CMC §
 27 3401, in analyzing the claims in the Complaint which arise under Commonwealth law, the Court
 28 must first look to written or customary law of the CNMI, and in the absence thereof, the Court
 must resort to the principles announced in the “restatements of the law approved by the
 American Law Institute.” 7 CMC § 3401.

1 maliciously and corruptly”). Judicial immunity also applies to a former sitting judge if the
 2 complaints against him arise from judicial acts while he was serving as a judge. *See Sparks v.*
 3 *Duval County Ranch Co., Inc.*, 588 F.2d 124, 125-26 (5th Cir. 1979).⁴ This bar to suits against
 4 judges applies even if the acts complained of were “[g]rave procedural errors or acts in excess of
 5 judicial authority.” *Schucker v. Rockwood*, 846 F.2d 1202, 1204 (9th Cir. 1988), *cert denied*,
 6 488 U.S. 995 (1988).

7 Judicial immunity from *all civil liability* is firmly rooted in the common law.⁵ Its
 8 application to tort actions is similarly expressed in the Restatement of Laws. RESTATEMENT
 9 (SECOND) OF TORTS § 895D(2) (1979) (“A public officer acting within the general scope of his
 10 authority is immune from tort liability for an act or omission involving the exercise of a judicial
 11 or legislative function.”); *id. cmt. c* (“[A] judge . . . is not liable for his discretionary acts or
 12 omissions even though he is found to have acted with malicious or improper motives.”). This
 13 common law doctrine extends to suits brought under federal law, including claims under section
 14 1 of the Civil Rights Act of 1871, 42 U.S.C. § 1983, and §§ 1984-1986, and the Racketeering
 15 Influenced and Corrupt Organization Act, 18 U.S.C §§ 1961-68 (“RICO”). *See Stump v.*
 16 *Sparkman*, 435 U.S. 349, 356 (1978); *Cok v. Consenito*, 876 F.2d 1, 1-2 (1st Cir. 1989)
 17 (dismissing claims against a judge brought under 42 U.S.C. §§ 1983-1986); *Cullinan v.*
 18 *Abramson*, 128 F.3d 301, 307-08 (6th Cir. 1997) (stating that, like § 1983, the court had no
 19 reason to suppose that RICO was intended to abolish the absolute immunity of judges); *See*
 20 *Singh v. Parnes*, 199 F. Supp. 2d 152, 155, 164-65 (S.D.N.Y. 2002) (holding that a judge was
 21 absolutely immune from a civil RICO action based on decisions made during a court
 22 proceeding).

23 “A judge loses absolute immunity only when he acts in the clear absence of all
 24 jurisdiction or performs an act that is not judicial in nature.” *Schucker*, 846 F.2d at 1204; *see*

25

⁴ Agreed with on rehearing *en banc*. *See Sparks v. Duval County Ranch Co., Inc.*, 604 F.2d
 26 976, 978 (8th Cir. 1979).

27

⁵ *See Mitchell v. Forsyth*, 472 U.S. 511, 521 (1985); *Pierson v. Ray*, 386 U.S. 547, 553-54
 28 (1967) (“Few doctrines were more solidly established at common law than the immunity of
 judges from liability for damages for acts committed within their judicial jurisdiction.”).

1 *also Ashelman v. Pope*, 793 F.2d 1072, 1075 (9th Cir.1986). To determine if the judge acted
 2 with jurisdiction, courts analyze whether the judge acted clearly beyond the scope of subject
 3 matter jurisdiction, in contrast to personal jurisdiction. *See Ashelman*, 793 F.2d at 1075.
 4 “Where not clearly lacking subject matter jurisdiction, a judge is entitled to immunity even if
 5 there was no personal jurisdiction over the complaining party. *Id.* at 1076. Jurisdiction is
 6 construed liberally when judicial immunity is at issue. *See Stump*, 435 U.S. at 356-57; *see also*
 7 *Ashelman*, 973 F.2d at 1076 (“Jurisdiction should be broadly construed to effectuate the policies
 8 supporting immunity.”). An act is judicial in nature if it is a “function normally performed by a
 9 judge, and to the expectations of the parties, i.e., whether they dealt with the judge in his judicial
 10 capacity.” *Ashelman*, 793 F.2d at 1075 (quoting *Sparkman*, 435 U.S. at 362).

11 In the case at bar, there is no allegation that any of the Judicial Defendants acted in a
 12 nonjudicial capacity or without subject matter jurisdiction.

13 Although Bradshaw claims that Justice Castro acted illegally and without force of law by
 14 finding that Bradshaw was properly served, Justice Castro did not act in the clear absence of
 15 subject matter jurisdiction. Regardless of whether the Judicial Defendants lacked personal
 16 jurisdiction over Bradshaw, Justice Castro had subject matter authority to preside over the trial,
 17 *see* 1 CMC § 3202, and Justices Manglona and Bellas had subject matter authority to preside
 18 over the appeal. *See* 1 CMC § 3102. As the Judicial Defendants were performing judicial
 19 functions within the scope of their subject matter jurisdiction, judicial immunity acts as an
 20 absolute bar to Bradshaw’s lawsuit. Assuming every conspiracy allegation is correct, Bradshaw
 21 is still left with absolutely no civil recourse against the Judicial Defendants. *See Sparks*, 588
 22 F.2d at 125; *see also Pierson*, 386 U.S. at 554 (involving a conspiracy claim).

23 Bradshaw is not permitted discovery to develop his case because to do so would damage
 24 all judges, not just the Judicial Defendants. The Supreme Court has noted that:

25 The judicial process is an arena of open conflict, and in virtually every case there
 26 is, if not always a winner, at least one loser. It is inevitable that many of those
 27 who lose will pin the blame on judges, prosecutors, or witnesses and will bring
 28 suit against them in an effort to relitigate the underlying conflict. . . . [T]he mere
 threat of litigation may significantly affect the fearless and independent
 performance of duty by actors in the judicial process

1 *Mitchell*, 472 U.S. at 521-22. In yet another case the Court explained:

2 It is a judge's duty to decide all cases within his jurisdiction that are brought
 3 before him, including controversial cases that arouse the most intense feelings in
 4 the litigants. His errors may be corrected on appeal, but he should not have to fear
 5 that unsatisfied litigants may hound him with litigation charging malice or
 corruption. Imposing such a burden on judges would contribute not to principled
 and fearless decision making but to intimidation.

6
 7 *Pierson*, 386 U.S. at 554.

8 For the benefit of the public, it is imperative that "a judicial officer, in exercising the
 9 authority vested in him, shall be free to act upon his own convictions, without apprehension of
 10 personal consequences to himself." *Bradley v. Fisher*, 80 U.S. 335, 347, 349 (1872). Requiring a
 11 judge to appear in a civil action based on judicial acts degrades his office and destroys his
 12 usefulness. *Bradley*, 80 U.S. at 349.

13 Bradshaw in claim Four, ¶161, alleges Justice Castro "...allowed the conflicting,
 14 confusing, and contradicting material from Bisom **into evidence...**" (emphasis added). In claim
 15 Five, ¶200, Bradshaw alleges that despite having his July 14th letter, and some contradictory
 16 documents filed by Bisom, Justices Manglona and Bellas "...**upheld the trial court's**
 17 **actions....**" (emphasis added). These are two examples of how Bradshaw's pleadings
 18 misapprehend the difference between carrying out a judicial function and "injuring" him. At all
 19 times, Justices Castro, Manglona and Bellas were acting in their judicial capacities. Each of the
 20 Defendants had subject matter jurisdiction while performing a judicial act. Justice Castro, as the
 21 trial judge, made legal and factual findings in the context of the trial. Justices Manglona and
 22 Bellas made legal findings in the context of an appellate decision and order. Justice Bellas,
 23 while appointed *pro tempore* and no longer serving in a judicial capacity, is protected by judicial
 24 immunity because the acts complained of occurred while he was serving as a judge. *See Sparks*,
 25 588 F.2d at 125-26. Accordingly, the Judicial Defendants are absolutely immune from suit for
 26 any acts they took during the course of Bradshaw's lawsuit and the subsequent appeal. *See*
 27 *Singh*, 199 F. Supp. 2d at 164-65 (S.D.N.Y. 2002) (holding that the judge's decisions and orders
 28 issued "in connection with foreclosing a proceeding . . . manifestly constitute official judicial

1 acts for which . . . [the judge] is immune from claims for money damages.”). The instant action
 2 unequivocally must be dismissed.

3 **II. The matter must be dismissed under FRCP 12(b)(1) because the**
 4 **controversy is moot: Judge Lizama set aside the default judgment in the**
 5 **Bisom Lawusit by the order dated December 29, 2005. Claims 1-17.**

6 This action is moot and should be dismissed under FRCP 12(b)(1) for lack of jurisdiction.
 7 FRCP 12(b)(1). *White v. Lee*, 227 F.3d 1214, 1242 (9th Cir. 2000). “Rule 12(b)(1) jurisdictional
 8 attacks can be either facial or factual.” *Id.* It is appropriate for this Court to look to matters of
 9 public record in determining mootness under Rule 12(b)(1). *See id.* (“With a factual Rule
 10 12(b)(1) attack, . . . a court may look beyond the complaint to matters of public record without
 11 having to convert the motion into one for summary judgment.”).

12 The basis of Bradshaw’s claim is the default judgment against him. The damages sought
 13 by Bradshaw in this matter are: relief from the judgment entered against him for \$139,000.00;
 14 compensatory damages in the amount of \$8,230.00 for previous litigation expenses; and
 15 \$750,000.00 in punitive damages. Because the judgment has been vacated by the Lizama Order,
 16 *see Exhibit C*, there is no longer an injury and the action is moot.

17 An action becomes moot when the issue of the lawsuit is “no longer live or the parties
 18 lack a legally cognizable interest in the outcome.” *See Sample v. Johnson*, 771 F.2d 1335, 1338
 19 (9th Cir. 1985). “Federal courts lack jurisdiction to decide moot cases because their
 20 constitutional authority extends only to actual cases or controversies.” *Sample*, 771 F.2d at
 21 1338. Because Judge Lizama vacated the default judgment against Bradshaw, there is no longer
 22 an issue to be addressed in this action. Bradshaw should not be able to maintain what amounts to
 23 an appeal in federal court for an amount of money he no longer owes in state court.⁶ While it is
 24

25 ⁶ The Rooker-Feldman doctrine holds that when an action in the federal district court is a de
 26 facto appeal of a state, or in this case Commonwealth, court ruling, the Federal claim must be
 27 dismissed for lack of subject matter jurisdiction. *See Doe v. Mann*, 415 F.3d 1038, 1042 (9th
 28 Cir. 2005) (“Mary Doe requests that we ‘undo’ a prior state court judgment, which is another
 way of presenting a federal district court with a de facto appeal that bars subject-matter
 jurisdiction under the *Rooker-Feldman* doctrine.”).

1 possible for a court to choose to adjudicate a moot issue when there is a likelihood that plaintiff's
 2 injury may occur again, *see Sample*, 771 F.2d at 1338-39, there is no likelihood in this case that
 3 Bradshaw's alleged injury is capable of repetition.

4 Furthermore, although it is possible in 42 USC §§ 1981 and 1983 cases to award punitive
 5 damages without establishing liability for compensatory or nominal damages, the plaintiff cannot
 6 recover unless he shows that the defendant violated a federally protected right. *See Passantino v.*
 7 *Johnson & Johnson Consumer Products, Inc.*, 212 F.3d 493, 514 (9th Cir. 2000). As
 8 demonstrated more fully below, this is not the case here as Bradshaw's "federally protected
 9 rights" are nothing more than a collection of alleged torts dressed up as constitutional violations.
 10 Indeed, the fact that Judge Lizama vacated the default judgment in the Bisom Lawsuit
 11 demonstrates that Bradshaw's constitutional protections were not only preserved, but that they
 12 were enforced.⁷

13 Because the controversy is moot, this case must be dismissed for lack of subject matter
 14 jurisdiction under FRCP 12(b)(1). *See White*, 227 F.3d at 1242 ("Because standing and
 15 mootness both pertain to a federal court's subject-matter jurisdiction under Article III, they are
 16 properly raised in a motion to dismiss under Federal Rule of Civil Procedure (b)(1) . . ."). To
 17 the extent that the mootness question depends on the ability to state a claim under §§ 1981 and
 18 1983, the case must be dismissed for failing to meet the threshold for survival under Rule
 19 12(b)(6).

20 **III. Plaintiff's 42 U.S.C. 1983 claims should be dismissed because he does not**
 21 **raise facts to support those claims and in the alternative they sound in tort**
 22 **and do not raise constitutional issues: Claims 1-5, 8, 13.**

23 Federal law requires that "a litigant complaining of a violation of a constitutional right . . .
 24 . utilize 42 U.S.C. § 1983." *Azul-Pacifico, Inc. v. City of Los Angeles*, 973 F.2d 704, 705 (9th
 25 Cir. 1992). Section 1983 requires that plaintiff prove that: "(1) a person acting under the color of
 26

27 ⁷ Even assuming the Plaintiff's claims for attorneys' fees or punitive damages are not moot,
 28 Judge Lizama's decision unequivocally moots any claim for relief from the judgment entered
 against Bradshaw for \$139,000.00.

1 state law committed the conduct at issue; and (2) the conduct deprived the Plaintiff of some right
 2 protected by the Constitution or laws of the United States.” *Seed v. Hudson*, No. CIV. A. 93-
 3 00081994, WL 229096 at *6 (D.N. Mar. I. May 11, 1994) (citing *Leer v. Murphy*, 844 F.2d 628,
 4 632-33 (9th Cir.1988)); *see also Daniels v. Williams*, 474 U.S. 327, 330-31 (1986) (holding that
 5 mere negligence cannot form the basis of a Fourteenth Amendment violation actionable under §
 6 1983).

7 At the very least, § 1983 demands that Bradshaw plead that the Judicial Defendants
 8 deprived him of “some right protected by the Constitution or laws of the United States.” *Seed*,
 9 1994 WL 229096 at *6 (citing *Leer*, 844 F.2d at 632-33). Simple torts, however, do not
 10 necessarily equate to a violation of constitutional rights. For example, medical malpractice does
 11 not become a constitutional violation just because the plaintiff happened to be a prisoner and
 12 false imprisonment does not become a Fourteenth Amendment violation just because the
 13 defendant happens to be a state official. *Davis*, 375 F.3d at 717. The Amended Complaint
 14 contains outlandish and unsubstantiated statements to the effect that “Justice Castro failed to
 15 exercise due care and responsibility as the trial judge,” Amended Complaint, ¶ 177, and that by
 16 violating court rules Justice Castro “joined-in” the alleged “fraud” and “conspiracy,” Amended
 17 Complaint, ¶ 185. These conspiracy and fraud claims clearly allege tort law concepts of duty of
 18 care, and not constitutional violations actionable under § 1983. *See Davis*, 375 F.3d at 717
 19 (““Section 1983 imposes liability for violations of rights protected by the Constitution, not for
 20 violations of duties of care arising out of tort law.””) (citation omitted).

21 Further, vague and conclusory allegations of participation in civil rights violations are
 22 insufficient to withstand a motion to dismiss. *See Ivey*, 673 F.2d at 268. To prove conspiracy
 23 under section 1983, “an agreement or meeting of the minds to violate. . . [the plaintiff’s]
 24 constitutional rights must be shown.” *Woodrum v. Woodward County*, 866 F.2d 1121, 1126 (9th
 25 Cir. 1989).

26 Bradshaw has failed to plead exactly which federally protected right was violated by the
 27 Judicial Defendants. In his complaint, Bradshaw makes many vague statements, such as: Justice
 28 Castro “possibly” conspired to violate court rules, see Amended Complaint at ¶121; the